

(2016) 06 KL CK 0038

In the High Court Of Kerala

Case No : W.P.(C). Nos. 13719 and 18362 of 2016

Rema Devi

APPELLANT

Vs

Joint Registrar (General) of Co-Operative Societies

RESPONDENT

Date of Decision : 10-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Co-operative Societies Act, 1969 — Section 70

Citation : (2016) AIR(Kerala) 146 : (2016) 3 ILRKerala 233 : (2016) 3 KerLJ 14 : (2016) 3 KHC 645 : (2016) 3 KLT 50

Hon'ble Judges : Shaji P. Chaly, J.

Bench : Single Bench

Advocate : Sri. K. Anand, Senior Advocate, Smt. Latha Anand, Sri. M.N. Radhakrishna Menon and Sri. Joseph Sebastian (Parackal), Advocates, for the Appellant; Sri. A.J. Jose Aedaodi, Government Pleader, Smt. I. Sheela Devi, SC, Ernakulam Dist. Co.Op. Bank, for the R

Final Decision : Disposed Off

Judgement

Shaji P. Chaly, J.—The captioned writ petitions are connected with respect to the question to be decided and therefore, I propose to dispose of the writ petitions together. The common question arising in the writ petitions is whether the Arbitration Court under the Kerala Co-operative Societies Act (hereinafter referred to as "the Act") has power to set aside an ex parte award. The facts may not have much bearing, but, however facts encapsulated are recited herein.

2. Petitioners in the writ petitions are defendants in ARC Nos. 246/2011 and 328/2014 filed by the 2nd and 4th respondent banks respectively. The said arbitration cases are filed by the respective banks to recover the money due to it from the petitioners herein. Petitioners in W.P.(C) No. 113719/2016 are legal heirs of one Raveendran Pillai, who stood as guarantor to the loan transactions. Consequent to the death of Raveendran Pillai, petitioners were impleaded, and had filed written statement refuting the contentions and claims and demands in the arbitration case. On 24.11.2015, when the case was taken up for

consideration there was no representation and thereupon they were set ex parte and Ext.P1 award was passed. Petitioners received a copy of the same on 18.1.2016 and filed Ext.P2 petition to set aside the ex parte order. Ext.P2 petition was dismissed by Ext.P3 order holding that the application for setting aside the ex parte order is not maintainable and an appeal is to be filed before the Arbitration Tribunal. It is thus aggrieved by Ext.P3, writ petitioners have come up before this court.

3. Petitioners in WPC 18362/2016 availed a loan from the 4th respondent bank. Since repayment was defaulted, bank instituted proceedings. Even though, petitioners received notice from the Arbitrator, it is contended that, they could not attend the arbitration proceedings since the 1st petitioner, who is an asthma patient was taken to the hospital due to suffocation while they were proceeding to attend the arbitration case. Thereafter petitioners received ex parte arbitration award on 17.12.2015. Then only petitioners came to know that they were set ex parte in the above arbitration case. Petitioners immediately filed Ext.P3 petition to set aside the ex parte award. But as per Ext.P4, the same was declined stating that, the Arbitrator has already returned the files to the Joint registrar of Cooperative Societies along with the award and therefore, the application filed by the petitioners cannot be considered. Thereafter, petitioners have filed Ext.P5 before the Registrar of Co-operative Societies seeking direction to the Arbitrator to consider Ext.P3 application. Having not secured the relief from any of the respective parties, petitioners have approached this court by filing the writ petitions.

4. Heard learned counsel for the petitioners, learned Government Pleader and the counsel appearing for the respective parties.

5. The questions to be considered in W.P.(C) No. 13719/2016 are whether the Arbitrator was right in holding that since the award is passed by the Arbitrator the same cannot be re-considered by the Arbitrator again, for want of power to set aside the ex parte award and whether any implied power is available to set aside the award in the absence of any specific provision under the Act and Rules ? It is true that under Section 70 of the Act, Arbitrator is not vested with any power to set aside an ex parte award even though during the pendency of the proceedings Arbitrator is vested with powers under sub-section(2) of Section 70 to make such interlocutory orders as it may deem necessary in the interest of justice. That apart sub-section (3) provides, certain powers, vested in a civil court under the Code of Civil Procedure, 1908 to the Arbitrator. But there also there is no specific power vested in the Arbitrator to set aside the ex parte award. There are no provisions under the Cooperative Societies Rules enabling the Arbitrator to set aside an award. Therefore, the question is, in the absence of a specific power whether the Arbitrator can consider the application filed by a litigant to set aside the award.

6. A learned Single Judge of this Court had occasion to consider the said question in Joseph. A.R. and others v. Co-operative Arbitration Court, Kozhikode and

others reported in [2013 KHC 776] and held that even though there is no specific power vested under Section 70 enabling the Arbitrator to set aside an award, in order to render justice, the Arbitrator is vested with implied inherent powers to entertain an application for setting aside the ex parte award. Therefore, going by the decision it is clear that the impugned orders passed by the Arbitrator are not in accordance with law.

7. However, learned Government Pleader has pointed out that a contra proposition is laid down by another learned Single Judge of this court in P.C. Paulose v. E.P. Sukumaran Nair reported in [1974 KLT 47] , in which it was held that an Arbitrator has no jurisdiction to entertain an application to set aside ex parte award and restore the case for hearing. However, as per the judgment in P.C. Paulose (supra) this court dismissed the Original Petition filed by the defendant in the proceedings holding that there was no justifying circumstances to interfere with the order passed by the Arbitrator, restoring the suit filed by the society. But, however, I have come across a Division Bench judgment of this Court in Thankam R. Pillai v. Arbitrator reported in [1996 (1) KLT 225], wherein this court has held that the Arbitrator under Section 70 of the Act has power to implead the legal representatives of a deceased petitioner in a proceeding pending before him. That apart another learned Single Judge of this court in Cheru Ouseph v. Kunjipathumma reported in [1981 KLT 495] held that every tribunal is vested with inherent/deemed powers to render justice. Yet again another learned Single Judge of this court in Kerala State Co-operative Consumer Federation Ltd., Ernakulam v. K. Vasu and others reported in [2015 (3) KHC 954 = 2015 (3) KLT 636] held that Arbitrator has power to set aside an ex parte award, as such a power is inherent in the exercise of jurisdiction by a quasi judicial body. So also another Division Bench of this court in Ebrahim Ismail Kunju v. Phasila Beevi reported in [1991 (1) KLT 861] had occasion to consider a similar question with respect to the powers of the Rent Controller to permit joint trial of cases, even though no such specific power conferred under Section 23 of the said Act. That apart I have come across judgments of the Apex Court in Rameshwar Manjhi v. Sangramgarh Colliery [(1994) 1 SCC 292], Radhakrishna Mani Tripathi v. L.H. Patel and another [(2009) 2 SCC 81] and Ram Shiroman Mishra v. Vishwanath Pandey [(2012) 8 SCC 575] wherein also it was held that every Tribunal is vested with implied inherent powers in order to render justice. Therefore, the judgment of the learned Single Judge of this court in P.C. Paulose (supra) holding that an Arbitrator has no jurisdiction to entertain an application to set aside an ex parte award may not be a correct proposition of law in view of the Division Bench judgments rendered by this court as well as the Apex Court judgments referred to above.

8. The Arbitrator under Section 70 is conferred with power enabling it to decide on the core issues placed before it for consideration. The said ultimate power provided to the Arbitrator is broader, wider and deeper, than trivial, peripheral or an ancillary issue that crop up during the course of a proceeding or thereafter. Viewed in that manner, it can be seen that, if the power is vested to decide a

more serious issue, then the power to decide an issue to set aside an award or to restore an application dismissed for default is an axiomatic power that is implied and deemed under Section 70 of the statute itself. Every court, Tribunal or authorities with quasi judicial powers are constituted for the purpose of discharging justice and therefore, if such implied, deemed and inherent powers are not available to such authorities, justice will be a casualty at their hands. Moreover, such proceedings will become uneconomic, cumbersome and delayed. That apart if such power is not exercised by the Arbitrator, result will be opening up docket explosion before the Appellate Tribunal and Constitutional Courts. Same will also create delay in rendering justice to the litigant public on merit.

9. In a democratic polity like India, State is conferring more and more judicial power on administrative authorities under very many statutes. Therefore, if no specific or inherent powers are not enjoyed by such authorities, and if they are not exercising their implied inherent powers, then it will lead to saturation and delay in the justice delivery system. Such circumstances will also unnecessarily bother courts, doing serious judicial business, by spending its precious judicial time to sort out such technical issues which are trivial and peripheral in nature and character. Conferring such powers on the authorities imbibe and generate more and more confidence to the public at large to resort to legal remedies rather than indulging themselves in committing wrongs and illegalities. Moreover, a litigant approaching a Court/Arbitrator/Tribunal/other Authorities should not get entangled in such technical snags. In order to provide more and more faith in the judicial system technicalities should be eliminated and attract more and more people to resort to law which is also a basic requirement of rule of law. So also every litigation, irrespective of quality, quantity and strength is expected to be decided objectively considering the contentions put forth by the rival parties. This is sine qua non to the rule of law as well as public law. The authorities vested with such judicial powers also should understand and realise that power is inherently vested in them to render justice and further that the power vested in them to do a larger judicial work itself is an indicative factor to show that they are vested with inherent powers to set aside the ex parte award and also to restore applications/suits dismissed for default.

10. The tribunal or other such institutions, manned by administrative authorities either should be taught about their implied inherent powers to do justice in ancillary matters. The Government should also think of providing specific powers to such quasi judicial authorities to set aside ex parte orders, restoration of suit or applications, impleading legal heirs on death of party etc. etc. if not inherent powers.

11. Yet another predominant aspect is whether the Arbitrator becomes functus officio merely because an ex parte award is passed or a suit or application is dismissed for default. Black's Law Dictionary, Ninth Edition defines functus officio as follows:

"[Latin "having performed his or her office"]. (19c) of an officer or official

body) without further authority or legal competence because the duties and functions of the original commission have been fully accomplished."

12. Therefore, even going by the dictionary meaning, it can be seen that, an officer or official body ceases to have further power only on the functions of the original commission have been fully accomplished. Therefore, merely because an ex parte award is passed, in my view, the Arbitrator will not become functus officio. The authority by doing so is not accomplishing the end result of objective evaluation by deciding the dispute on merits and therefore, the authority is still vested with power inherently to restore the application or set aside the award and fully discharge the function as empowered under the provisions of law.

13. Taking into account the totality of the facts, law and circumstances stated above, I am of the considered opinion that the impugned orders passed by the respective Arbitrators are not in accordance with law. Therefore, Exts.P3 and P4 in the writ petitions respectively are quashed.

14. Resultantly, the writ petitions are allowed and direct the Arbitrators to take on board the applications for setting aside the ex parte awards and consider the same on merit and in accordance with law within a period of one month from the date of receipt of a copy of this judgment.

15. Writ petitions are allowed accordingly.